

**Re.** : Response to Office Action Mailed July 28, 2005  
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## **II. REMARKS**

The Office Action rejected Claims 1-27. By the foregoing amendments, Applicants amended Claims 1, 2, 4, 5, 9, 12 and 25 to further clarify, more clearly define and/or broaden the claimed invention, and expedite receiving a notice of allowance. Pursuant to 37 C.F.R. § 1.121(f), no new matter is introduced by these amendments. Applicants believe that Claims «FormData» are now in condition for allowance.

Please note that Applicants' remarks are presented in the order in which the issues were raised in the Office Action for the convenience and reference of the Examiner. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, is consistent with the Examiner's. Further, the following remarks are not intended to be an exhaustive enumeration of the distinctions between any particular reference and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and that reference.

### **A. Response to the Section 102(b) Rejection**

The Office Action rejected Claims 1 and 8 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 3,970,304 issued to Ebstein, et al. The Office Action contends that the Ebstein patent discloses a backboard including a top, a bottom and a front and a rear; an elongated support that is sized and configured to position the backboard above a surface; a backboard support

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assembly connecting the backboard to the elongated support; and a goal support assembly including a rim (15) and a support member (un-numbered flange from rim (15) in Fig. 1) with a first end that extends substantially beyond a plane that is centrally aligned with the front of the backboard and is attached to the rim and a second end that extends substantially beyond a plane that is generally aligned with the rear of the backboard, an intermediate portion of the support member of the goal support assembly being attached to the backboard support assembly at an attachment point that is at least substantially behind the plane that is generally aligned with the front surface of the backboard (Fig. 1). The Office Action states that, as to Claim 8, the Ebstein patent discloses a backboard that can be adjusted (Fig. 1, item 50, 52).

Applicants respectfully traverse this rejection because the Ebstein patent does not disclose each and every element of Claims 1 or 8. In order to further clarify, define and/or broaden the claimed invention, and expedite receiving a Notice of Allowance, Applicants amend Claim 1.

Applicants amended Claim 1, for example, to provide “a resistance mechanism including a first end and a second end, the first end of the resistance mechanism being connected to the support member of the goal support assembly and the second end being connected to the support structure, the resistance mechanism being sized and configured to allow the rim to move between a first position in which the rim is generally perpendicular to the front portion of the backboard and a second position in which the rim is disposed at an angle to the front portion of the backboard, the resistance mechanism being sized and configured to bias the rim into the first position.” Thus, Claim 1 now positively recites the goal support assembly includes a resistance mechanism with a first end

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and a second end, the first end of the resistance mechanism being connected to the support member of the goal support assembly and the second end being connected to the support structure, the resistance mechanism being sized and configured to allow the rim to move between a first position in which the rim is generally perpendicular to the front portion of the backboard and a second position in which the rim is disposed at an angle to the front portion of the backboard, the resistance mechanism being sized and configured to bias the rim into the first position.

The Ebstein patent does **not** disclose goal support assembly that includes a resistance mechanism with a first end and a second end, the first end of the resistance mechanism being connected to the support member of the goal support assembly and the second end being connected to the support structure, the resistance mechanism being sized and configured to allow the rim to move between a first position in which the rim is generally perpendicular to the front portion of the backboard and a second position in which the rim is disposed at an angle to the front portion of the backboard, the resistance mechanism being sized and configured to bias the rim into the first position. Therefore, the Ebstein patent does **not** disclose each and every element of Claim 1.

Because the Ebstein patent does not disclose each and every element of Claim 1, Applicants respectfully request that this Section 102(b) rejection be withdrawn. Additionally, Applicant requests that this Section 102(b) rejection of Claim 8 be withdrawn at least because this claim is dependent upon amended Claim 1.

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**B. Response to the First Section 103(a) Rejection**

The Office Action rejected Claims 2 and 6 under 35 U.S.C. 103(a) as being unpatentable over the Ebstein patent in view of United States Patent No. 3,365,196 issued to Miller. The Office Action states that the Ebstein patent discloses the elements of Claim 2 (Fig. 1), however, the Office Action acknowledges that it fails to clearly disclose the use of a resistance mechanism. The Office Action states the Miller patent discloses the use of a resistance mechanism (Fig. 6, un-numbered spring on item 36). The Office Action also states that various rim assemblies are well known in the art. The Office Action contends that it would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the rim assembly of Miller with the apparatus of Ebstein in order to provide a more dynamic goal and enjoyable game for the player. The Office Action states that the mechanism would naturally be connected to the goal support assembly. In addition, the Office Action states, that for Claim 6, the Miller patent discloses two arms (Fig. 1).

Applicants respectfully traverse this rejection because neither the Ebstein and/or Miller patents, either alone or in combination, teach, suggest or disclose each and every element of Claims 2 and 6. Applicants, however, request that this rejection of Claims 2 and 6 be withdrawn at least because these claims are dependent upon amended Claim 1.

**C. Response to the Second Section 103(a) Rejection**

The Office Action rejected Claims 7 under 35 U.S.C. 103(a) as being unpatentable over the Ebstein patent as applied to Claim 1 above and further in view of Official Notice. The Office Action

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stated that Official Notice is taken that the use of portable basketball systems is well known in the art. The Office Action contends that it would have been obvious to one of ordinary skill in the art at the time of the invention to have employed a portable system with the apparatus of Ebstein in order to easily move and store the system.

Applicants respectfully traverse this rejection because neither the Ebstein and/or the Official Notice taken by the Examiner, either alone or in combination, teach, suggest or disclose each and every element of Claim 7. Applicants, however, request that this rejection of Claim 7 be withdrawn at least because this claim is dependent upon amended Claim 1.

**D. Response to the Third Section 103(a) Rejection**

The Office Action rejected Claims 9, 11-16, 19 and 20 under 35 U.S.C. 103(a) as being unpatentable over the Ebstein patent in view of United States Patent No. 5,947,847 issued to van Nimwegen. The Office Action states that the Ebstein patent discloses the elements of Claim 9 (Fig. 1), but acknowledges that it fails to clearly disclose the use of a resistance mechanism. The Office Action contends that that the van Nimwegen patent discloses the use of a resistance mechanism (Fig. 4a). The Office Action also states that various rim assemblies are well known in the art.

Applicants respectfully traverse this rejection because the Ebstein and van Nimwegen patents, either alone or in combination, do not teach, suggest or disclose each and every element of Claims 9, 11-16, 19 or 20. However, in order to further clarify, define and/or broaden the claimed

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invention, and expedite receiving a Notice of Allowance, Applicants have amended Claims 9 and 12.

**1. Claim 9**

Applicants amended Claim 9 to provide “a goal support assembly including a rim and an elongated support member, the elongated support member including a first end that is disposed beyond a front portion of the backboard and is attached to the rim, the elongated support member including a second end that is disposed beyond a rear portion of the backboard” and “a resistance mechanism including a first end and an opposing second end, the first end of the resistance mechanism being connected to the elongated support member of the goal support assembly, the second end of the resistance mechanism being spaced apart from the elongated support assembly, the resistance mechanism being sized and configured to allow the goal support assembly to move from a first position to a second position when a force greater than a predetermined amount of force is applied to the rim, the resistance mechanism being sized and configured to move the goal support assembly from the second position to the first position when the force applied to the rim is removed.” Thus, Claim 9 positively recites the goal support assembly includes a rim and an elongated support member, **the elongated support member including a first end that is disposed beyond a front portion of the backboard and is attached to the rim, the elongated support member including a second end that is disposed beyond a rear portion of the backboard.** In addition, Claim 9 positively recites the resistance mechanism includes a first end and an opposing

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second end, the first end of the resistance mechanism being connected to the elongated support member of the goal support assembly, the second end of the resistance mechanism being spaced apart from the elongated support assembly.

The Ebstein and van Nimwegen patents do not disclose a goal support assembly includes a rim and an elongated support member, the elongated support member including a first end that is disposed beyond a front portion of the backboard and is attached to the rim, the elongated support member including a second end that is disposed beyond a rear portion of the backboard. The Ebstein and van Nimwegen patents also do not disclose the resistance mechanism includes a first end and an opposing second end, the first end of the resistance mechanism being connected to the elongated support member of the goal support assembly, the second end of the resistance mechanism being spaced apart from the elongated support assembly. Therefore, the Ebstein and van Nimwegen patent do not teach, suggest or disclose each and every element of Claim 9.

## **2. Claim 12**

Applicants amended Claim 12 to provide “a resistance mechanism including a first end and an opposing second end, the first end of the resistance mechanism being connected to the goal support assembly, the second end of the resistance mechanism being spaced apart from the goal support assembly.” Thus, Claim 12 now positively recites the goal support assembly includes a resistance mechanism including a first end and an opposing second end, the first end of the

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**resistance mechanism being connected to the goal support assembly, the second end of the resistance mechanism being spaced apart from the goal support assembly.**

Neither the Ebstien or van Nimwegen patents, however, do **not** teach, suggest or disclose a resistance mechanism including a first end and an opposing second end, the first end of the resistance mechanism being connected to the goal support assembly, the second end of the resistance mechanism being spaced apart from the goal support assembly. Consequently, the van Nimwegen patent does **not** disclose each and every element of Claim 12.

Because the Ebstein and van Nimwegen patents do **not** teach, suggest or disclose each and every element of Claims 9 and 12, Applicants respectfully request that this Section 103(a) rejection be withdrawn. Additionally, Applicant requests that the Section 103(a) rejection of Claims 11, 13-16, 19 and 20 be withdrawn at least because each of these claims are dependent upon amended Claims 9 and 12 respectively.

**E. Response to Double Patenting Rejection**

The Office Action rejected Claims 1-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-23 of copending United States Patent Application Serial No. 10/802,433. The Office Action stated that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the application are simply broader than the patent claims and clearly “read” on the claims in the patent.

Applicant respectfully traverses this rejection. As stated in the Office Action, however, a

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timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

Accordingly, in order to expedite receiving a Notice of Allowance, Applicant submits herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to Obviate any Double Patenting Rejection in view of copending United States Patent Application Serial No. 10/802,433 under the judicially created doctrine of obviousness-type double patenting. In addition, Applicant submits herewith two Certificates under 37 C.F.R. § 3.73(b) establishing that copending United States Patent Application Serial No. 10/802,433 and this application are commonly owned by the Assignee. Accordingly, Applicant requests that this double patenting rejection be withdrawn.

In particular, the Certificate under 37 C.F.R. § 3.73(b) establishes that Assignee Lifetime Products, Inc. is the owner of copending United States Patent Application Serial No. 10/802,433 by an assignment from the inventors to the Assignee recorded at reel/frame 015110/0003. A second Certificate under 37 C.F.R. § 3.73(b) establishes that Assignee Lifetime Products, Inc. is the owner of this application by an assignment from the inventors to the Assignee recorded at reel/frame 014714/0404. This terminal disclaimer is accompanied by the fee set forth in 37 C.F.R. § 1.20(d) in the amount of \$130.00. Please charge any underpayment or credit any overpayment to Deposit Account No. 23-3178. Accordingly, Applicant requests that this rejection be withdrawn.

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CONCLUSION

In view of the foregoing, Applicant submits that Claims 1-27 are allowable over the cited references and are in condition for allowance. Accordingly, Applicant requests that a Notice of Allowance be promptly issued. If any further impediments to allowance of this application remain, the Examiner is cordially invited to contact the undersigned by telephone so that these remaining issues may be promptly resolved.

The Commissioner is authorized to charge payment of any additional fees associated with this communication, which have not otherwise been paid, to Deposit Account No. 23-3178. If any additional extension of time is required, which have not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to Deposit Account No. 23-3178.

Respectfully submitted,

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By:   
Richard C. Gilmore  
Registration No. 37,335  
Attorney of Record

**Customer No. 22,913**

WORKMAN NYDEGGER  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800  
Facsimile: (801) 328-1707  
E-mail: [rgilmore@wnlaw.com](mailto:rgilmore@wnlaw.com)